

MEDIATION FEE-SHARING PROPOSAL

Certain entities have agreed to participate in a confidential voluntary mediation process pursuant to the Mediation Order (“Mediation Order”) entered August 15, 2013 by the Court in NECC Product Liability Litigation, MDL No. 1:13-md-2419-FDS (“MDL Court”). The purpose of the mediation is to attempt to arrive at a mutually acceptable resolution of the Parties’ dispute in a cooperative and informal manner, avoiding unnecessary, costly and protracted litigation, and conserving limited resources.

The parties to the mediation have attempted to negotiate in good faith their respective responsibilities for the fees and related costs of the mediator’s services, and have considered whether a cap on such fees is appropriate. This fee-sharing proposal is submitted pursuant to paragraph E of the Mediation Order.¹

FEES:

Professional services for Mediations will be billed at the hourly rates disclosed in Exhibit C to the Mediation Agreement (also attached hereto).

Fees and expenses shall be separately tracked for each person or entity that has opted into the mediation program (“Mediation Participant”).

Rescheduling – (1) No rescheduling fee will be charged if a mediation/arbitration session is rescheduled more than 15 days before the date of the session; (2) a rescheduling fee of 50% of the applicable daily mediation/arbitration fees will be charged if a session is rescheduled within 15 days of the session, unless the day(s) can be rescheduled for another matter, through reasonable efforts.

Cancellation – (1) If a mediation/arbitration session is canceled more than 45 days before a session, prepaid professional fees are fully refundable, except to the extent preparation or other professional time has already been incurred; (2) the parties are charged for incurred preparation time and booked daily mediation/arbitration fees in

¹ The deadline to file a proposed fee sharing structure was later extended until November 22, 2013. *See* Clerk’s Notes for the November 7, 2013 Status Conference, ECF #567.

cases canceled less than 45 days before the session, unless the day(s) can be rescheduled for another matter, through reasonable efforts.

Early Completion – If a mediation/arbitration session is completed in fewer day(s) than reserved, the actual time reserved but not used by the Parties will be billed unless the day(s) can be booked for another matter, through reasonable efforts.

EXPENSES:

Actual expenses incurred will be billed at cost.

BILLING AND PAYMENT:

A prepayment based on estimated fees and expenses is billed and due when the engagement on particular dates is confirmed. Any portion of the prepaid estimated fees and expenses unused as the result of overestimate of preparation time or expenses will be promptly refunded.

Estimated Pre-mediation Preparation:

Mediator	2 hours at \$400/hour	\$800
Conference call	1.5 hours at \$400/hour	\$600
Mediation Session(s):		\$3,200.00
		<hr/>
	Total:	\$4,600.00
	Amount paid by PSC:	\$2,300.00
	Amount paid by Mediation Participant:	\$2,300.00

Follow-up invoices are due 30 days after receipt.

Interest at the rate of 1% per month will be charged on any unpaid invoice over 30 days past due.

FEE SHARING:²

The Plaintiffs' Steering Committee will pay 50% of the total mediation fees and expenses incurred in mediating with each Mediation Participant. The Mediation Participant will pay the remaining 50% of the total mediation fees and expenses incurred in mediating claims against it.

While there may be different phases of mediation (*e.g.*, initial funding, subsequent allocation among claimants), fee sharing will be done on the same percentage basis at each different phase.

Notwithstanding these terms, should the Plaintiffs Steering Committee, a Mediation Participant, and Resolutions LLC find it desirable to change this fee sharing arrangement, they may do so if they all agree to new terms in writing.

/s/ Carmin Reiss

For: RESOLUTIONS, LLC

/s/ Thomas M. Sobol

For: PLAINTIFFS STEERING COMMITTEE

/s/ Michael R. Gottfried

For: THE CHAPTER 11 TRUSTEE

/s/ Kiersten A. Taylor

For: OFFICIAL CREDITORS COMMITTEE

/s/ Michael Samms

For: VICTORY HEATING & AIR CONDITIONING CO., INC.,
VICTORY MECHANICAL SERVICES, INC.

² ARL will agree to pay for 50% of the mediation process between ARL and the Plaintiffs only not to exceed \$10,000 in total payments from ARL. ARL will not participate in, nor pay for, any procedures, phases or processes, including the allocation among claimants, that take place after the mediation between ARL and the Plaintiffs.

/s/ Kristen Ragosta

For: ARL BIOPHARMA, INC.